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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,664	03/12/2001	Jill E. Barad	MAT 3C7B	2442

23581 7590 08/15/2003

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EXAMINER

CEGIELNIK, URSZULA M

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 08/15/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/804,664

Applicant(s)

BARAD ET AL.

Examiner

Urszula M Cegielnik

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6,13 and 18-28 is/are allowed.
- 6) ☒ Claim(s) 1-5,7-12 and 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-12, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leicht, Jr.

Leicht, Jr. discloses a customer-defined, packaged, personalized toy comprising: a package (26) having an aperture (Figures 1, 13, and 15); a personalized toy (22) in the package (26), customer-defined identifying materials (24) supported in the package so that the identifying material is visible through the aperture of the package (Figures 1, 13, and 15); wherein the package has a flap (Figures 13 and 14: a single-piece cover/flap construction 158) covering the personalized toy (22) and customer-defined identifying material removably attached to the flap wherein at least a portion of the identifying material is visible from the exterior of the package (col. 3, lines 64-68 and col. 4, lines 1-16); the flap (158) having an inside and an outside (Figures 13 and 14), where the inside of the flap (158) faces a personalized toy configured in accordance with a pre-ordered customer's specification (i.e., the customer of a retailer which only wants car number 3); wherein the identifying material (24) includes a customer-defined toy name (i.e., collector's card); wherein the flap is adapted to be opened to reveal the personalized toy (22) (col. 5, lines 36-51); wherein the identifying material includes a

story related to the personalized toy (col. 3, lines 67-68 and col. 4, lines 1-5); wherein the identifying material (24) is removable (col. 4, lines 63-68 and col. 5, lines 1-9); further comprising a toy-support card (116,118) to display the personalized toy (22) within the package (col. 5, lines 16-20) and wherein the personalized toy is visible through the aperture when the identifying material (24) is removed (Figure 9).

With regards to the "customer-defined identifying material customized according to specifications created by a customer", it is notoriously well known in the art that a select number of each type of personalized toy (22) would be made by the manufacturer according to the specifications of the vendor (i.e.. the customer).

Allowable Subject Matter

Claims 6, 13, and 18-28 are allowed.

Response to Arguments

Applicant's arguments filed 06 June 2003 have been fully considered but they are not persuasive.

Regarding Applicants' contention that Leicht, Jr. does not suggest or otherwise disclose customer-defined identifying material that is customized according to specifications created by a customer, the examiner submits that Leicht, Jr. does indeed disclose the abovementioned limitation in that the vendor can specify the type and quantify of customized toy cars having a card of a particular driver of the car to be produced by the manufacturer.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 703-306-5806. The examiner can normally be reached on Monday through Friday, from 6:45AM - 3:15PM.

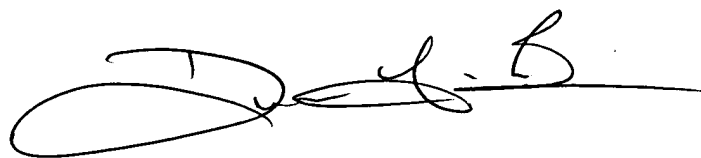
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 703-308-1745. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at 703-306-5648.

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Art Unit: 3712

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Urszula M. Cegielnik
Assistant Examiner
Art Unit 3712

A handwritten signature in black ink, appearing to read 'D. H. Banks', with a long horizontal line extending to the right.

DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700